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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of the Secretary

In the Matter of

Amendment of Part 90 of the
Commission's Rules to Eliminate
Separate Licensing of End Users
of Specialized Mobile Radio Systems)

PR Docket No. 92-79

To: The Commission

ORIGINAL
FILE

REPLY COMMENTS OF RAM MOBILE DATA USA LIMITED PARTNERSHIP

RAM Mobile Data USA Limited Partnership ("RMD") hereby
replies to comments filed in this proceeding and demonstrates the
following:

First, there is consensus among those who have experience
operating under the existing private land mobile rules that end
user licensing should be eliminated as an unnecessary regulatory
burden. It is clear that end user licensing requirements are not
necessary to the sound administration of frequencies licensed in
the private land mobile radio service and that their purpose can
be achieved by far less burdensome regulatory requirements.
Indeed, there is, in fact, no serious contention as to these
matters, even among those opposed to the Commission's proposed
elimination of these requirements.

Second, those who assert that end user licensing is
necessary for SMRs to continue to be included in the private land

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mobile radio service and exempt, by statute,¹, from state rate or entry regulation are wrong: As a matter of law, there is no such requirement in the statute. Furthermore, it would be contrary to the public interest and sound regulatory policy for the Commission, in effect, to freeze SMRs in time, and ignore advances in technology, changes in customer requirements, and public policy initiatives to free advancing U.S. technologies from unnecessary regulatory burdens.

Finally, to the extent that loading remains a useful requirement for which the Commission continues to require end user information, a process based upon certifications by SMR licensees is appropriate. RMD urges, more generally, that loading requirements be eliminated for nationwide systems or, if not eliminated, modified so as to be capable of meaningful application to them.

I. THERE IS BROAD RECOGNITION THAT END USER
LICENSING IS UNNECESSARY.

The comments reflect the broad recognition of the private land mobile radio community that SMR end user licensing imposes an unnecessary regulatory burden which should be eliminated, as the Commission has proposed. From the SMR industry, industry organizations, AMTA, NABER, and the Council of Independent Communications Suppliers ("CICS"), and licensees as diverse as Idaho Communications Limited Partnership, an SMR licensee serving rural Idaho areas, Fleet Call and RMD support the Commission's

¹ 47 U.S.C. § 332(c).

proposal. In addition, organizations representing non-SMR private land mobile interests, SIRSA and the American Petroleum Institute, recognize the unduly burdensome nature of SMR end user licensing and support its elimination.

Among other things, this breadth of support is significant because it cuts across groups who may well have different, and possibly conflicting, views about SMR loading standards and related issues for which end user licensing information has been used as an enforcement mechanism. In other words, putting aside broader policy issues regarding loading, all of those parties with any experience in operating under the Commission's private land mobile radio rules recognize that end user licensing represents an inefficient and impracticable means by which to reach this policy end.

The only parties to file comments opposed to the Commission's proposed elimination of end user licensing requirements are cellular licensees, worried about increased competition from SMR systems, and some state regulatory organizations who, along with the cellular carriers, use this proceeding primarily as an opportunity to express their displeasure over the Commission's rulings regarding Fleet Call.² Yet, the comments of these parties are markedly devoid of any discussion, or even contention, that end user licensing serves

² See Comments of: People of the State of California and the Public Utilities Commission of the State of California ("Cal. PUC"), at 1; National Association of Regulatory and Utility Commissions ("NARUC"), at 2, 5-9; McCaw Cellular Communications, Inc. ("McCaw"), at 4-7; Joint Comments of GTE Mobilnet Inc. and Contel Cellular Inc. ("Joint Comments"), at 3-4.

any sound administrative purpose that cannot be achieved by less burdensome requirements. Rather, as discussed below, it is very clear that those parties opposing the Commission's proposals do so out of regard to a completely different agenda.

II. END USER LICENSING IS NOT REQUIRED BY STATUTE.

The thrust of the comments opposing the Commission's deregulatory efforts in this and other similar proceedings involving SMRs appears to be that in order for SMRs to continue to fall within their statutory exemption to state regulation, they must operate and be regulated by the Commission exactly as they did and were when the Congress enacted the relevant statutory provision in 1982. According to this theory, SMRs must forego advances in technology, ignore changing customer requirements, and be bound by unnecessary regulation, all because, somehow, any advancement in the ways in which they provide their service will render their service common carriage. This theory has been rejected countless times by the Commission as unsupported by the plain language of the statute³ and is fundamentally at odds with the public interest in the delivery of efficient, technologically advanced, consumer-responsive, telecommunications services. It should be rejected here as well.

As the Commission has pointed out on numerous occasions, the relevant statutory provision includes a very clear test regarding the legal status of private carriers, based upon whether or not they resell common carrier telephone exchange service at a

³ See, e.g., Report and Order (Subparts M & S Consolidation), 3 FCC Rcd. 1838, 1839-1842 (1988).

profit.⁴ In so holding, the Commission has expressly rejected the notion that the statute limits its ability to expand the category of those eligible to receive SMR service and it is inescapable from the logic of this decision that the Commission is not bound by statute to limit eligible users to those who hold end user licenses.⁵

Because there is a clear statutory test for determining the limits on SMR operations to preserve their private carrier status, there is no basis for looking beyond the statute to try to discern some alternative, yet unstated legislative intent.⁶ Even if underlying legislative materials were deemed relevant, moreover, there is nothing in the Congressional report materials cited by the commenting parties that supports the conclusion that end user licensing was deemed by Congress to have any bearing on the issue of common carriage.

Furthermore, none of the parties raising this statutory issue even attempts to explain any real relationship between end user licensing any common carriage. Indeed, NARUC candidly admits that, in its view, the end user licensing "requirement is not relevant to any statutory analysis distinguishing between private and common carrier radio services."⁷ Instead, the argument of those opposed to the elimination of end user

⁴ Id. at 1840.

⁵ Id.

⁶ See, e.g., Illinois Bell Telephone Company v. F.C.C., slip no. 89-1365 (June 16, 1992), at 6-7); Reiter v. Sonotone Corp., 442 U.S. 330, 339 (1979).

⁷ NARUC Comments at 3.

licensing boils down to that end user licensing was required by the Commission when the relevant statute was enacted, therefore, it must be required now. But this argument makes no more sense than to suggest that other elements of the Communications Act can be meaningfully applied only to radio stations (television would be in limbo) as they operated and were regulated by the Commission in 1934 or, indeed, even earlier at the time that the Radio Act of 1927 was adopted.

Indeed, what is particularly ironic about the argument today is that the Commission now has pending its second, in the last ten years, proposed comprehensive rewrite of Part 22 of the Commission's rules governing cellular and other common carrier mobile services.⁸ The purpose of the proposal is, inter alia, "to eliminate outdated rules and unnecessary information collection requirements."⁹ And, among the proposals, is the elimination of traffic loading studies,¹⁰ which is the Commission's common carrier equivalent to SMRs loading and end user licensing requirements. It is hard to imagine anyone seriously suggesting that the Commission's proposal to eliminate traffic loading studies will make licensees in the public land mobile service any more or less common carriers or more or less subject to statutory or other regulations governing the service, regardless of when enacted. But, the same logic should apply in

⁸ Notice of Proposed Rule Making, FCC 92-205, CC Docket 92-115 (June 12, 1992).

⁹ Id., ¶ 1.

¹⁰ Id., ¶ 16.

the private land mobile radio service when the Commission makes similar proposals to do away with outdated regulation.

III. SMR LICENSEE RESPONSIBILITIES FOR REPORTING LOADING SHOULD BE PREMISED ON A LICENSEE CERTIFICATION PROCESS

A number of suggestions have been made by various private land mobile licensees and organizations for how best to administer loading requirements in the absence of end user licensing requirements. As an initial point, RMD believes that it should be clear that in situations where loading is not required, as RMD urges with respect to nationwide systems, the submission of end user information should also not be required. For situations when loading is deemed relevant, RMD believes that a number of useful suggestions have been made for administering end user reporting requirements, which, when distilled, lead to the following approach:

First, as suggested by SIRSA, CICS, and others, the cornerstone of the process, as in other Commission licensing matters, should be based on licensee certification, with appropriate sanctions for false certification. Comments of SIRSA and CICS at 7-8.

Second, it follows that while such certification should be based upon business records, such underlying records should not be required to be submitted in the ordinary course, lest the Commission replace one burdensome filing requirement with another.

Third, in circumstances when such records are required to be submitted or subject to examination, because of their proprietary

nature, they should be subject to confidentiality protection, as suggested by NABER. NABER Comments at 4. Indeed, RMD urges the Commission to go farther than NABER's suggestion regarding the confidentiality of financial information and to adopt a rule that provides that all business records required to be submitted in connection with loading shall be treated as confidential. Indeed, as pointed out by RMD, customer lists are themselves highly valuable and proprietary information which, as a general matter, should not be required to be made available to competitors.

Fourth, RMD believes that minor differences in views regarding the responsibilities of SMR licensees for end user information should best be governed by the standards suggested by AMTA, which distinguish between actions taken by an end user that are within the SMR licensee's knowledge and control and those that are not. SMR licensees should be held responsible for the former, but not the latter.

IV. CURRENT LOADING STANDARDS CANNOT BE MEANINGFULLY APPLIED IN NATIONWIDE SYSTEMS

Finally, RMD continues to urge that broader issues regarding the applicability of loading standards to nationwide systems be taken up quickly either in this proceeding or in the Commission's Phase II 900 MHz proceeding. As RMD has demonstrated in its previous comments, even with all of the proposed reforms in the end user licensing process, loading standards either should not be applicable to nationwide systems, as RMD has urged, or they

need to be modified so that can be meaningfully applied to an integrated nationwide SMR network.

V. CONCLUSION

RMD joins with other members of the private land mobile industry in supporting the Commission's continuing efforts to eliminate burdensome and unnecessary regulatory requirements such as end user licensing. RMD urges the Commission to maintain steadfast against those who insist that SMR regulation cannot be changed to reflect advances in technology and customer requirements and who appear to urge regulation for regulation's sake. The time for that approach has long since passed.

Respectfully submitted,

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July 6, 1992

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